

APPEAL NO. 041746
FILED SEPTEMBER 7, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 22, 2004. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the sixth and seventh quarters.

The claimant appealed, contending that she had a total inability to work during the sixth quarter qualifying period and that she had made a good faith effort to find employment commensurate with her ability to work during the seventh quarter qualifying period. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying periods for the sixth and seventh quarters. The claimant contended that she had no ability to work during the sixth quarter qualifying period and that she had made a good faith job search during the seventh quarter qualifying period.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts.

With regard to the sixth quarter qualifying period there are several reports from the claimant's treating doctor in evidence. The hearing officer did not comment whether she believed any of those reports constituted a narrative which specifically explains how the claimant's neck and right shoulder injuries caused a total inability to work. The hearing officer did reference a report dated July 18, 2003 (two months prior to the beginning of the sixth quarter qualifying period), from Dr. C, the carrier's required medical examination doctor, who stated that the claimant could return to work "in a sedentary classification" with certain restrictions. That report supports the hearing

officer's determination that the claimant did not meet the requirements of Rule 130.102(d)(4) and was not entitled to SIBs for the sixth quarter.

With regard to the seventh quarter, the claimant did begin to look for work. The qualifying period was from December 19, 2003, to March 18, 2004. The claimant's Application for [SIBs] (TWCC-52) lists some 20 job contacts during the qualifying period. The dates of 6 job contacts prior to January 25, 2004, are illegible. Further, it appears that no job contacts were documented between February 19 and March 8, 2004. The hearing officer commented that the claimant "did not look for work every week of the qualifying period" (See Rule 130.102(d)(e)).

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LM INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge